IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 437

OCEAN DRILLING & EXPLORATION COMPANY,

Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.

Respondent.

SUPPLEMENTAL AND REPLY BRIEF ON BEHALF OF PETITIONER

This supplemental and reply brief is submitted pursuant to §§4 and 5 of Rule 24 of the Rules of this Court.

The opposition of respondent is basically an attempt to restrict the issues in this case to a narrow field and to preclude a consideration by this Court of a most important legal issue, namely, whether the *Ryan* doctrine of indemnity is to be restricted to the ship-stevedore cases, or be given broader effect and applied in the offshore oil industry. Respondent's brief in opposition infers that the words "vessel" and "seaman" have a talismanic effect — absent a vessel or seaman the *Ryan* warranty cannot come

into being. This overlooks the origin of the warranty. Actually, the implied warranty of workmanlike performance was not born in *Ryan*, and the real issue is whether or not the application of what has come to be known as the *Ryan* doctrine to the circumstances present in the offshore oil industry will have a salutary and beneficial effect. The implied warranty was not created in the maritime field, and its application has not since been so restricted.

Since the petition herein was filed, a District Court in California has applied the *Ryan* warranty to a non-maritime situation. *Great American Insurance Company vs. Evans*, 269 F. Supp. 151 (D.C. Cal., 1967). In that case an employee of the lessee of a warehouse was injured while using a freight elevator and subsequently died as a result of the injuries. The lessee of the warehouse had contracted with Valley Elevator Company to maintain the freight elevator. The contract provided that Valley "would assume no liability for injuries or damage to persons or property except those directly due to [Valley's] acts or omissions." The heirs of the decedent brought an action against the owners of the warehouse, the lessee and Valley alleging that the death was due to the negligent operation, maintenance, and control of the elevator. A jury returned a verdict against all defendants. The plaintiff Great American, as insurer of the owners, partially satisfied the judgment and took an assignment from its insured of their right to indemnification. This action was brought against the lessee and Valley seeking indemnification. The lessee settled the claim against him and the case proceeded against Valley only. The Court held that the right of implied indemnity as set forth in *Ryan Stevedoring Company vs. Pan Atlantic Corp*, 350 U. S. 124, 76 S. Ct. 232 (1956) came into being as a result of

the maintenance contract between the lessee and Valley, and that Great American as the assignee of the owners of the building was a third party beneficiary of this implied indemnity, citing *Crumady vs. The Joachim Hendrix Fisser*, 358 U. S. 423, 79 S. Ct. 445 (1959).

This holding demonstrates that the issues presented in the petition for a writ of certiorari are, in fact, substantial questions of federal law which have not been but should be, settled by this Court.

Petitioner therefore respectfully prays that a writ of certiorari should issue herein as prayed for in the original petition.

Respectfully submitted,

GEORGE B. MATTHEWS of
LEMLE & KELLEHER,
1836 National Bank of
Commerce Building
New Orleans, Louisiana

DANIEL HUTTENBRAUCK of
MENDES & MOUNT
27 William Street
New York, New York

Attorneys for Ocean Drilling
and Exploration Company

CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing petition for a writ of certiorari has been duly served on John Allen Bernard, Esq., Attorney for Respondent, by depositing same in the United States mail, postage prepaid, addressed to him at Post Office Drawer No. 3507, Lafayette, Louisiana 70504.

New Orleans, Louisiana, this day of , 1967.